# RE KV SATHASIVAM; EX P PHILEOALLIED BANK (MALAYSIA) BHD

HIGH COURT MALAYA, MELAKA
LOW HOP BING J
[BANKRUPTCY NO: 29-619-2000]
18 FEBRUARY 2004

***BANKRUPTCY:*** *Notice - Substituted service - Alleged irregularities in substituted service - Admission by debtor that bankruptcy notice was brought to his notice - Whether object of substituted service achieved - Whether service deemed good and sufficient*

***BANKRUPTCY:*** *Notice - Understatement of debt due - Failure by debtor to dispute notice on the basis of proviso (ii) to s. 3(2) of the Bankruptcy Act 1967 - Whether debtor misled, embarrassed or perplexed - Whether bankruptcy notice valid*

***BANKRUPTCY:*** *Practice and procedure - Substituted service - Alleged irregularities in substituted service - Admission by debtor that bankruptcy notice was brought to his notice - Whether object of substituted service achieved - Whether service deemed good and sufficient*

***BANKRUPTCY:*** *Judgment - Execution more than six years after judgment - Execution on judgment within 12 years - Interest claimed on judgment calculated exactly six years from date of judgment - Failure by creditor to obtain leave of court to execute - Technical non-compliance with rules of court - Whether bankruptcy notice valid*

***CIVIL PROCEDURE:*** *Rules of court - Non-compliance - Non-compliance with O. 46 r. 2(3) RHC 1980 - Whether court is to have regard to the justice of the case and not only to technical non-compliance with rules of court - RHC 1980, O. 1A, O. 2 r. 3, O. 46 r. 2(2)*

The registrar allowed the judgment debtor's ('JD') application to set aside the bankruptcy notice taken out by the judgment creditor ('JC'). The JC appealed to the High Court. The High Court had to *inter alia* determine the following issues: (a) whether the order for substituted service of the notice was irregularly obtained; (ii) whether the bankruptcy notice was based on a lapsed judgment; and (iii) whether an understatement of interest in the bankruptcy notice invalidated the notice. The JD further raised a technical objection to the effect that the JC had not complied with O. 46 r. 2(3) of the RHC 1980.

**Held (allowing the JC's appeal with costs):**

**[1]** Practice Note 1 of 1968 must be read in light of O. 62 r. 5(1) of the RHC 1980 which gives the court the power to make an order for substituted service of a document if it appears impracticable for any reason to serve the document personally. The object of substituted service is to bring the bankruptcy notice to the knowledge of the debtor and if that object is achieved, the service must be deemed good and sufficient. On the facts, the debtor admitted that the bankruptcy notice was brought to his knowledge. Thus the High Court was unable to uphold the contention that the order for substituted service had been wrongly obtained or that the service thereof was bad. (p 555 a, f-g)

**[2]** On the facts, the impugned bankruptcy notice dated 30 June 2000 based on the judgment obtained on 22 October 1988 was clearly within the period of 12 years, and which judgment would only lapse on 21 October 2000. In the instant appeal, the impugned bankruptcy notice specifically stated that interest was calculated up to 2190 days, *ie*, exactly six years from the date the judgment was granted and was therefore valid. (pp 556 c & 558 b)

**[3]** In administering the rules of the court, the court or judge should have regard to the justice of the particular case and not only to the technical non-compliance with the rules. On the facts the technical objection raised by the JD in relation to the JC's non-compliance with O. 46 r. 2(3) had been superseded by amendments to the RHC, notably O. 1A and O. 2 r. 3 which came into effect on 16 May 2002 *vide* PU(A) 197/2002. (p 558 f-g)

**[4]** There was clearly an understatement of the interest due in the bankruptcy notice. However, this understatement of interest could not have misled, embarrassed or perplexed the JD. The bankruptcy notice made it clear what was required to be paid, secured or compounded by the JD in order to avoid an act of bankruptcy. Further, as the JD had not disputed the bankruptcy notice on the basis of proviso (ii) to s. 3(2) of the Bankruptcy Act 1967, the bankruptcy was not invalidated. (pp 559 d-e & 560 d)

**Case(s) referred to:**

*Beauford Baru Sdn Bhd v. Gopalan Krishnan VK Gopalan [2002] 3 CLJ 686 HC* ***(refd)***

*Datuk Mohd Sari Datuk Hj Nuar v. Norwich Winterthur Insurance (M) Sdn Bhd [1992] 4 CLJ 1798; [1992] 1 CLJ (Rep) 68 SC* ***(refd)***

*J Raju M Kerpaya v. Commerce International Merchant Bankers Bhd [2000] 3 CLJ 104 CA* ***(refd)***

*Kamaruddin Mohamed v. United Motor Works (M) Sdn Bhd [1982] 1 MLJ 126* ***(refd)***

*Koh Thong Kuang v. United Malayan Banking Corp Bhd [1994] 4 CLJ 488 FC* ***(refd)***

*Megat Najmuddin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd [2002] 1 CLJ 6 FC* ***(refd)***
*Megnaway Enterprise Sdn Bhd v. Soon Lian Hock [2003] 5 CLJ 103 HC* ***(refd)***
*Re Amarjit Kaur Bakhshis Singh, ex p BSN Commercial Bank (Malaysia) Bhd [2001] 1 CLJ 412 HC* ***(refd)***
*Re Hj Ahmad Lazim & Anor, ex p Bank Kerjasama Rakyat (M) Bhd [1999] 2 CLJ 101 HC* ***(refd)***
*Re Ismail Daud & Anor, ex p Universal Life & General Insurance Sdn Bhd [1990] 1 MLJ 118 HC* ***(refd)***
*Re Pg Ahmad Pg Hj Abdullah; ex p Oriental Bank Bhd [1991] 3 CLJ 2899; [1991] 3 CLJ (Rep) 463 HC* ***(refd)***
*Re S Nirmala Muthiah Selvarajah; ex p The New Straits Times Press (Malaysia) Bhd [1987] 1 CLJ 413; [1987] CLJ (Rep) 799 HC* ***(refd)***
*Re Liew Kong Ken Ex P Sucorp Enterprise Sdn Bhd [1998] 2 CLJ Supp 508 HC* ***(refd)***
*Re Lim Kim Guan, ex p Four Seas Bank Ltd [1991] 1 MLJ 330* ***(refd)***
*Re V Gopal; ex p Bank Buruh (M) Berhad [1987] 1 CLJ 602; [1987] CLJ (Rep) 602 HC* ***(refd)***
*Re Yau Kin Mun; ex p Public Bank Bhd [1999] 5 MLJ 497 HC* ***(refd)***
*Sovereign General Insurance Sdn Bhd v. Koh Tian Bee [1988] 1 CLJ 155; [1988] 1 CLJ (Rep) 277 SC* ***(refd)***
*Terrance Simon Marbeck v. Kerajaan Malaysia [2003] 6 CLJ 120 HC* ***(refd)***
*United Malayan Banking Corp Bhd v. Ernest Cheong Yong Yin [2001] 2 CLJ 31 CA* ***(refd)***
*United Malayan Banking Corporation Bhd v. Ernest Cheong Yong Yin [2002] 2 CLJ 413 FC* ***(refd)***
*Wee Chow Yong t/a Vienna Music Centre v. Public Finance Bhd [1990] 1 CLJ 176; [1990] 3 CLJ (Rep) 349 HC* ***(refd)***

**Legislation referred to:**
Bankruptcy Act 1967, ss. 3(1)(i), (2), (2)(ii), 6(3)
Rules of the High Court 1980, O. 1A, O. 2 r. 3, O. 46 r. 2(1)(a), (b), (3), O. 62 r. 5(1)

*For the judgment debtor - Siti Aishah Aziz; M/s Mohd Ali & Co*
*For the judgment creditor - SG Lingam; M/s SG Lingam & Co*

*Reported by AC Simon*

## JUDGMENT

**Low Hop Bing J:**

**Appeal**

This is an appeal in encl. (14) filed by the judgment creditor ("the JC") against the decision of the learned registrar who on 21 January 2002 allowed the application of the judgment debtor ("the JD") in encl. (8) to set aside the bankruptcy notice dated 30 June 2000 ("the impugned bankruptcy notice").

a **Factual Background**

On 22 October 1988, the JC obtained default judgment against the JD, which judgment has not been set aside, although para 8 of the JD's affidavit in support reserved his right to do so. The JD' further alleged that he has not been personally served with the impugned bankruptcy notice, although he believed
b that the JC did inform the JD of the JC's intention to personally serve the impugned bankruptcy notice on the JD sometime in August 2001, when the JD was undergoing medical treatment and so could not meet the JC's agent to accept service thereof.

Subsequently, the JC's solicitors sent a letter dated 8 August 2000 to the JD
c in connection with an appointment on 17 August 2000 in order to effect service of the impugned bankruptcy notice on the JD.

The context of that letter merits reproduction as follows:

d **CERTIFICATE OF POSTING**

Mr. K V Sathasivam @ Kumarasamy
No. 429, Lorong Satu
Ujung Pasir
75050 Melaka

e Dear Sir,

**MALACCA HIGH COURT BANKRUPTCY NO. 29-619-2000**
**PHILEOALLIED BANK (MALAYSIA) BERHAD - vs- KV SATHASIVAM @ KUMARASAMY**

f We act for PhileoAllied Bank (M) Berhad in respect of the above matter.

Our clerk had called over at your address to effect service of the Bankruptcy Notice on you on the 20th and 25th July, 2000 but as you were not in, service could not be effected.

Now, we write to inform you that our clerk shall be calling again at your
g address on 17th August, 2000 (Thursday) at 3.00 p.m. to effect service of the Bankruptcy Notice on you.

If the said appointment date is not suitable to you kindly call us at least one day before the appointment so that a suitable date can be fixed.

h Kindly be informed that if you fail to keep the appointment as above or as on the date proposed by you, we shall obtain a court order to effect service of the Bankruptcy Notice by substituted service upon you by way of causing an advertisment in any local newspaper and/or by any other means the Court deems proper in which event you shall be liable for the additional costs incurred.

i

Yours faithfully,

sgd.
S.G Lingam & Co

However, a member of the JD's family informed the JC's solicitors that the appointed date was not suitable.

*Vide* letter dated 18 August 2000 addressed to the JD, the JC's solicitors confirmed that the JD's son had spoken to one of the JC's solicitors Ms Ratha, on 16 August 2000 and that the JD's son would inform the JC's solicitors once the JD had returned home sometime in mid-September 2000, after the medical treatment, in order to accept service of the impugned bankruptcy notice, failing which the JC's solicitors shall proceed to obtain an order for substituted service ('ss').

On 27 September 2000, the JC's process server filed an affidavit of non service.

On 31 October 2000, the JC obtained an order for 'ss' to effect service of the impugned bankruptcy notice by posting a copy thereof on the notice board of the Melaka High Court and an advertisement in "The Star" and that such service shall be deemed to be good service seven days after such posting and advertisement.

The particulars of the sum claimed in the impugned bankruptcy notice are as follows:

**BUTIR-BUTIR TUNTUTAN**

[PARTICULARS OF THE CLAIM]

| | | |
|---|---|---|
| (a) Jumlah Penghakiman seperti dalam Penghakiman bertarikh 22hb Oktober 1988 melalui Mahkamah Tinggi Kuala Lumpur Guaman Sivil No. D2-23-1036-88 | RM | 812,188.06 |
| [Judgment sum as in Judgment dated 22nd October 1988 vide High Court Kuala Lumpur Civil Suit No. D2-23-1036-88] | | |
| (b) Faedah ke atas RM812,188.06 pada kadar 15% setahun dari 1hb Mac 1988 sehingga 30hb Jun 2000 (2190 hari) | RM | 730,969.25 |
| [Interest on RM812,188.06 at the rate of 15% per annum from 1 March 1988 to 30 June 2000 (2190 days) | | |

| | | |
|---|---|---|
| (c) Kos | RM | 225.00 |
| (Costs) | | |
| Jumlah tertunggak setakat 30hb Jun 2000 | RM | 1,543,382.31 |
| [Total arrears as at 30th June 2000] | | |

Bertarikh pada haribulan 30 Jun 2000.

[The translation in English appears in the brackets]

**JD's Grounds**

The grounds enumerated in encl. (8) ie, JD's application are that:

1. the order for 'ss' was irregularly obtained;
2. the impugned bankruptcy notice:
   - 2.1 was based on a judgment that has lapsed;
   - 2.2 claimed interest which was time-barred;
   - 2.3 not in accordance with the terms of the judgment; and
   - 2.4 cited a party which is different from the JC

The learned registrar dismissed two of the JD's grounds *viz* para 2.2 pertaining to time-barred interest; and para 2.4 pertaining to citation of a different party. The JD did not cross-appeal against those two grounds and so they are non-issues in relation to the JC's appeal before me. I shall now consider the other grounds *viz*. relating to 'ss', lapsed judgment and terms of the judgment.

**Counsel's Submissions And Decision On Appeal**

*1. Substituted Service*

This was the JD's first ground, in which learned counsel, Cik Siti Aishah bt Aziz relied on paras 5, 6 and 7 of Practice Note No. 1 of 1968 ("the Practice Note"); *Re S. Nirmala a/p Muthiah Selvarajah t/a Shamin Properties; Ex Parte The New Straits Times Press (Malaysia) Bhd.* [1987] 1 CLJ 413; [1987] CLJ (Rep) 799 HC.

En. S.G. Lingm, learned counsel for the JC, argued that the order for 'ss' has been properly obtained.

*Koh Thong Kuang v. United Malayan Banking Corp Bhd* [1994] 4 CLJ 488 FC; *Kamaruddin bin Mohamed v. United Motor Works (M) Sdn. Bhd.* [1982] 1 MLJ 126; and *Karen Ahmad Aliyuddin v. Standard Chartered*, Mallal's Digest of Malaysian and Singapore Case Law Fourth Edition 1998 Reissue para 4141 were cited in support.

In my view, the Practice Note must be read in the light of O. 62 r. 5(1) of the Rules of the High Court 1980 which gives the court the power to make an order for 'ss' of a document "if it appears impracticable for any reason to serve the document personally".

Order 62 r. 5(1) came up for judicial consideration in *Re S. Nirmala, supra,* by VC George J (later JCA) who explained that the Practice Note is a reproduction of the recommended guidelines found at p. 88 of the 1957 White Book, so that a mere statement that the person to be served was evading service was not sufficient to meet the requirement that it was impracticable to serve the document.

The Supreme Court in *Koh Thong Kuang, supra,* unanimously held that the Practice Note should not be applied blindly but *mutatis mutandis* the facts of each situation. The bone of contention there was that the order for 'ss' had been improperly obtained. The facts revealed that the bank had obtained judgment against the debtor and subsequently an order for 'ss' of the bankruptcy notice which was effected by posting a copy thereof on the notice board of the court, on a conspicuous part of the debtor's last known address in Bangsar, Kuala Lumpur; and also in the Malay Mail. The effective date of the 'ss' was 7 April 1993. On 9 April 1993, the debtor applied to set aside the bankruptcy notice, contending that for the previous six years he had resided in England and that the bank or the solicitors were fully aware. VC George J (later JCA) in delivering judgment of the court held that the bank was justified in concluding that the debtor was deliberately evading service and upheld the order for 'ss'.

In *Kamaruddin, supra,* the Federal Court explained that the object of 'ss' was to bring the bankruptcy notice to the knowledge of the debtor and that if achieved, the service must be deemed to be good and sufficient. Hence, although a failure to effect the posting within the time prescribed in respect of the posting at the debtor's premises could not be said to have occasioned a failure of justice, as the debtor has admitted in his affidavit that the bankruptcy notice was brought to his knowledge (see also *Karen Ahmad, supra*).

In the circumstances, I am unable to uphold the contention that the order for 'ss' has been wrongly obtained nor was the service bad.

*2. Bankruptcy Notice Based On Lapsed Judgment*

Para 9 of the JD's affidavit in support stated that the impugned bankruptcy notice was based on the judgment dated 22 October 1988 which has lapsed, as 12 years had elapsed since the date of the judgment and therefore unenforceable. That paragraph added that the JC obtained an order of the court dated 6 November 1996 to execute the judgment and that the bankruptcy notice should have been issued on or before 6 November 1997.

Reliance was placed on O. 46 r. 2(3); *Re V. Gopal; Ex parte Bank Buruh (M) Berhad* [1987] 1 CLJ 602; [1987] CLJ (Rep) 602, *Re Liew Kong Ken Ex P Sucorp Enterprise Sdn Bhd* [1998] 2 CLJ Supp 508; *Re Hj Ahmad Lazim & Anor, Ex P Bank Kerjasama Rakyat (M) Bhd* [1999] 2 CLJ 101; *United Malayan Banking Corporation Bhd v. Ernest Cheong Yong Yin* [2002] 2 CLJ 413; and s. 3 Bankruptcy Act 1967.

The stand taken for the JC is that the impugned bankruptcy notice has been issued within the period of 12 years. Support was sought in *Wee Chow Yong t/a Vienna Music Centre v. Public Finance Bhd* [1990] 1 CLJ 176; [1990] 3 CLJ (Rep) 349; *Re Yau Kin Mun; ex p Public Bank Bhd* [1999] 5 MLJ 497.

It is my specific finding that the impugned bankruptcy notice dated 30 June 2000 on the basis of the judgment obtained on 22 October 1988 is clearly within the period of 12 years, which would only lapse on 21 October 2000. That being the case, the JC's contention on this ground is within merits.

I shall now consider the authorities cited for the JD.

In *Re V. Gopal, supra*, the bankruptcy notice was issued a few days before six years had lapsed from the date of the relevant final judgment, but was only served a few days after six years had elapsed. VC George J (later JCA) held, *inter alia*, that on the date that the bankruptcy notice was served on the debtor, the creditor did not have a judgment on which execution could be proceeded with since to do so, by O. 46 r. 2(1)(a), leave of court had first to be obtained. Therefore on that date the creditor did not have a final judgment within the meaning of s. 3(1)(i) of the Bankruptcy Act 1967. The result was that the bankruptcy petition which was founded on what did not amount to an act of bankruptcy was dismissed with costs.

The predominant issue in *Re Liew Kong Ken, supra*, was whether leave should have been obtained by the petitioning creditor to change its name pursuant to O. 46 r. 2(1)(b) or other rules of the High Court. Richard Malanjum J (later JCA) held that a change of name is within the meaning of the word "otherwise" in O. 46 r. 2(1)(b), under which leave was required and that since the petitioning creditor has failed to obtain leave to change its name, it could not have proceeded to issue execution and if execution could not be issued at all, no bankruptcy notice could have been issued.

In *Re Hj. Ahmad Lazim, supra*, the JC obtained judgment against the JD in 1987. Sometime in 1998, the JC served on the JD a bankruptcy notice founded on that judgment, although six years have elapsed and leave has not been obtained to execute that judgment. Clement Skinner JC (now J) held, *inter alia*, the bankruptcy notice was irregularly issued and set it aside.

In my view, the above judgments of the High Court concern the issue of non-compliance with O. 46 r. 2 and so must be read in the light of the amendments to the Rules of the High Court 1980 *vide* PU(A) 197/2002 to which I shall revert later in my judgment.

In *United Malayan Banking Corporation Bhd, supra,* the JC obtained summary judgment against the JD on 15 October 1987. As no payment was made by the JD, the JC on 24 January 1996 filed a bankruptcy notice against the JD including accrued interest calculated up to six years ie, from the date of judgment on 15 October 1987 to 14 October 1993. The JD filed a summons in chambers to set aside the bankruptcy notice which was dismissed by the learned registrar. However, the JD was successful in his appeal to the judge in chambers who on 25 June 1996 held that the bankruptcy notice was invalid, and the learned judge's decision was affirmed by the Court of Appeal.

Leave to appeal to the Federal Court was granted to the JC on the following question:

> What is the proper construction of s. 6(3) of the Limitation Act 1953 (hereinafter "the Act") in respect of the second limb, that is, "No arrears of interest of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due?

Abdul Malek Ahmad FCJ in delivering judgment of the Federal Court dismissing the appeal held that the second limb of s. 6(3) of the Act provides that an action to recover arrears of interest must be brought within six years of the judgment date and because of the word "arrears", it cannot denote interest which is still not due. It must, therefore, mean arrears of interest at the time of recovery and cannot include future interest even if the amount due has not been paid.

The learned FCJ added at p. 427 e-f:

> In effect, therefore, it is our finding that the bankruptcy notice is in order as regards the amount claimed and the arrears of interest calculated in line with s. 3(1)(i) of the Bankruptcy Act which states that a debtor commits an act of bankruptcy if a creditor has obtained a final judgment or final order against him for any amount and execution thereon not having been stayed has served on him a bankruptcy notice under the said Act requiring him to pay the judgment debt with interest quantified up to the date of the bankruptcy notice.

In relation to the question posed, the Federal Court said that in view of the wording of the second limb of s. 6(3) of the Act, the act of recovery of the arrears of interest in respect of the judgment debt must be within six years of the judgment date and up to the date of the act of recovery. There was no formal defect or irregularity there, the only error of the JC was to file the bankruptcy notice out of time.

At p. 418 f, his Lordship further held that:

> At one glance, it is apparent to us that the learned senior assistant registrar was correct in holding that the bankruptcy notice was valid, and both the High Court and the Court of Appeal were wrong in holding otherwise, as the particulars in the bankruptcy notice specifically limited the interest claimed up to 14 October 1993 which is exactly six years from the date the summary judgment was granted.

Similarly in the appeal before me, the impugned bankruptcy notice specifically stated that the interest was calculated up to 2190 days ie, exactly six years from the date the judgment was granted. Following the above dictum, I hold that the impugned bankruptcy notice is valid.

The Federal Court did not feel the need to invoke O. 46 r. 2(3) in *United Malayan Banking Corporation Bhd, supra.*

In any event, the contention for the JD that the JC has failed to comply with O. 46 r. 2(3) is a technical point of procedure. It has been consistently stated by our courts that technicalities should not be allowed to obstruct the process of giving justice to the deserving: per Ahmad Fairuz JCA (now CJ Malaysia) in *United Malayan Banking Corp Bhd v. Ernest Chong Yong Yin* [2001] 2 CLJ 31; per Mohtar bin Abdullah FCJ (as he then was) in *Megat Najmuddin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd* [2002] 1 CLJ 645. See also *Beauford Baru Sdn Bhd v. Gopalan Krishnan VK Gopalan* [2002] 3 CLJ 686; *Megnaway Enterprise Sdn Bhd v. Soon Lian Hock* [2003] 5 CLJ 103; and *Terrance Simon Marbeck v. Kerajaan Malaysia* [2003] 6 CLJ 120, 125.

In administering any of the rules of the court, the court or judge shall have regard to justice of the particular case and not only to the technical non-compliance with the rules: O. 1A and O. 2 r. 3 of the Rules of the High Court 1980 which came into effect on 16 May 2002 *vide* PU(A) 197/2002.

In the circumstances, I hold that the technical objection raised for the JD on grounds of non-compliance with O. 46 r. 2(3) has been superseded by the aforesaid amendments and is hereby overruled.

*3. Bankruptcy Notice And Terms Of Judgment*

In support of this contention, the JD's stand is that the judgment states that "... defendants do pay the plaintiff RM812,188.06 together with interest thereon at the rate of 15% per annum on monthly rest from 1 March 1988 to date of full settlement and default interest at 5% per annum on monthly rest on the amount in excess of the approved limit of RM1,500,000 and RM225 costs", while the impugned bankruptcy notice did not say so.

JD sought reliance on *Re Re Ismail bin Daud & Anor, ex p Universal Life & General Insurance Sdn Bhd* [1990] 1 MLJ 118; *Low Mun, supra*; *J Raju M Kerpaya v. Commerce International Merchant Bankers Bhd* [2000] 3 CLJ 104; *Datuk Mohd Sari bin Datuk Haji Nuar v. Norwich Winterthur Insurance (M) Sdn Bhd* [1992] 4 CLJ 1798; [1992] 1 CLJ 68, *Re Pg. Ahmad bin Pg. Haji Abdullah; Ex Parte: Oriental Bank Bhd.* [1991] 3 CLJ 2899; [1991] 3 CLJ (Rep) 463.

For the JC, it was submitted that in the judgment the interest was at 15% per annum and default interest at 5% per annum, while the impugned bankruptcy notice merely claimed interest at 15% per annum, and so there was an understatement of interest, in which case the JD was not prejudiced, relying on *Re Lim Kim Guan, ex p Four Seas Bank Ltd* [1991] 1 MLJ 330; s. 3(2) of the Bankruptcy Act 1967, and *Sovereign General Insurance Sdn. Bhd. v. Koh Tian Bee* [1988] 1 CLJ 155; [1988] 1 CLJ (Rep) 277.

Upon a proper perusal of the terms of the judgment, it is obvious to me that the interest rate was ordered at 15% per annum while the default interest was ordered at 5% per annum. The impugned bankruptcy notice merely claimed the interest of 15% per annum and abandoned the 5% default interest. There was an understatement of the interest in the impugned bankruptcy notice. In my view, this understatement of interest could not have misled, embarrassed or perplexed the JD. The impugned bankruptcy notice had made it clear and certain what was required to be paid, secured or compounded by the JD in order to avoid an act of bankruptcy.

In *Lim Kim Guan, supra*, such an understatement of interest arose. LP Thean J of the Singapore High Court held that it was not a defect which was objectively capable of misleading the debtor. The learned judge dismissed the JD's countention on this ground.

In *Sovereign General Insurance, supra*, Lee Hun Hoe CJ (Borneo) referred to proviso (ii) to s. 3(2) of the Bankruptcy Act 1967 and held that a notice demanding a greater amount would not be liable to be held to be bad. Proviso (ii) to s. 3(2) of the Bankruptcy Act 1967 merits reproduction as follows:

**3. Acts of bankruptcy**

(2) A bankruptcy notice under this Act shall be in the prescribed form and shall state the consequences of non compliance therewith and shall be served in the prescribed manner:

Provided that a bankruptcy notice:

(i) ...; and

(ii) shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such mistake; but if the debtor does not give such notice he shall be deemed to have complied with the bankruptcy notice, if within the time allowed he takes such steps as would have constituted compliance with the notice had the actual amount due been correctly specified therein.

Proviso (ii) to s. 3(2) was considered by Abdul Aziz Mohamad J (now JCA) in *Re Amarjit Kaur Bakhshis Singh, Ex P BSN Commercial Bank (Malaysia) Bhd* [2001] 1 CLJ 412. The learned judge held that the proviso is very clear and has been strictly worded, and to dispute the bankruptcy notice on the ground that the amount specified in the notice actually due, notice to that effect must be given to the judgment creditor within seven days after the service of the bankruptcy notice under s. 3(1)(i). Otherwise, the notice "shall not be invalidated by reason only" of the mistake of excessive demand.

As the JD has not disputed the impugned bankruptcy notice on the basis of proviso (ii) to s. 3(2), I concur with the said dictum and apply it to the instant appeal and hold that the impugned bankruptcy notice is not invalidated.

*4. Conclusion*

On the foregoing grounds, I am of the view that the learned registrar has erred in dismissing the impugned bankruptcy notice. I therefore allow this appeal with costs, set aside the order of the learned registrar and order that the impugned bankruptcy notice be reinstated, to be heard by the present learned registrar on its merits.